IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 22ND AUGUST 2007 / 31ST SRAVANA 1929

Bail Appl..No. 5010 of 2007()

CRIME NO.398/2007 OF ALAPPUZHA NORTH POLICE STATION

: PETITIONER/ACCUSED 2 & 2:

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1. ANIL, S/O. ASHARAF,
   AGED 24 YEARS, BLOCK NO.2, AVALUKUNNU COLONY,
   THATHAMPALLY ZILLA COURT WARD, ALAPPUZHA.

2. ABIDA, W/O. ASHARAF,
   AGED 48 YEARS, BLOCK NO.2, AVALUKUNNU COLONY,
   THATHAMPALLY ZILLA COURT WARD, ALAPPUZHA.

BY ADV. SRI.K.S.HARIHARAPUTHRAN
SRI.GEORGE MATHEW

RESPONDENTS: COMPLAINANT:

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1. CIRCLE INSPECTOR OF POLICE,
   NORTH POLICE STATION, ALAPPUZHA THROUGH
   PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

2. SUB INSPECTOR OF POLICE,
   NORTH POLICE STATION, ALAPPUZHA THROUGH
   PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 22/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.5010 of 2007

Dated this the 22nd day of August, 2007

ORDER

Application for anticipatory bail. The petitioners are accused 1 and 2. They are the husband and mother in law respectively of the defacto complainant. The marriage took place on 16.01.05. F.I statement was lodged on 5.7.07. The spouses lived together till 3.7.07. Unable to endure the trauma meted out to her by the petitioners, the defacto complainant allegedly was taken away by her brother from the matrimonial home. She was taken to the docotor. The doctor examined her on 4.7.07. The victim had injuries on her person. She made the specific allegation to the doctor that she had suffered those injuries when she was tortured by her husband. The crime was registered. Investigation is in progress. The petitioners apprehend imminent arrest.

2. The learned counsel for the petitioners submits that the petitioners are absolutely innocent of the allegations levelled against them. There is strain in the matrimony. Because of such strain, the defacto complainant is making reckless and exaggerated allegations against the husband and mother in law. They do not deserve to endure the trauma of arrest and detention. Anticipatory bail may, in these circumstances, be issued to the petitioners, it is prayed.

3. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that the case diary clearly reveals information about the improper and cruel treatment – physical and mental meted out to the unfortunate victim/wife by the husband and the mother in law. The case diary has been placed before me for my perusal. The learned Public Prosecutor submits that this is not a fit case where the defacto complainant was inclined to make such allegations for the purpose of vexation. The learned Public Prosecutor in the case diary brings to my attention a wound certificate dated 1.7.07 where the victim who had suffered injuries was taken to the doctor on suspected fracture and the allegation was raised that the injuries was caused by the mother in law. Still no police complaint was made by her then.

4. Having considered all the relevant inputs, I am certainly of the opinion that this is not a fit case where the extraordinary equitable discretion under Section 438 Cr.P.C can or ought to be invoked in favour of the petitioners. This, I am satisfied, is an eminently fit case where the petitioners must be left to pursue the ordinary and normal course of appearing before the Investigating Officer or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course.

5. This application is, in these circumstances, dismissed, but I may hasten to observe that if the petitioners surrender before the Investigating Officer or the learned Magistrate and apply for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

(R.BASANT, JUDGE)

rtr/-